

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM H. HOLLISTER and RODDI J. SIMPSON

Appeal No. 2001-1399
Application No. 09/227,819

ON BRIEF

Before ABRAMS, FRANKFORT, and STAAB, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-8. Claims 9-14 have been withdrawn by the examiner as being directed to a non-elected invention.

We REVERSE.

BACKGROUND

The appellants' invention relates to a needle protection apparatus. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the Brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Landis	5,490,841	Feb. 13, 1996
Pyrozyk <u>et al.</u> (Pyrozyk)	5,843,047	Dec. 1, 1998
		(filed Jan. 29, 1997)

Claims 1-4, 6 and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Landis.

Claims 5 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Landis in view of Pyrozyk.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the Answer (Paper No. 13) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 12) and Reply Brief (Paper No. 14) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The Rejection Under Section 102

Independent claims 1 and 6 stand rejected as being anticipated by Landis. Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See In re Paulsen, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994) and In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). We find that not to be the case here. Our reasoning follows.

Claim 1 is directed to a needle protection device comprising a vial having a needle hub mated at one end and a needle extending away from the vial, and a needle housing having extending therefrom a collar configured to fit to said hub and "at least one gripper means for gripping said needle hub so that said collar is non-removably attached to said hub once it is fitted to said hub," wherein the housing is hingedly connected to the collar so as to be pivotable into alignment with the longitudinal axis of the needle for covering the needle.

Landis discloses a syringe 34 having female luer fitting 34A at its discharge end and a needle protection device for attachment to the female luer fitting. The needle protection device comprises a cylindrical sleeve 32 that is provided on one end with a male luer fitting 32A that is received in the female luer fitting 34A on the syringe, and on the other end with a female luer fitting 32B for receiving a coacting fitting 36 on a needle. Attached by hinge means 14 to sleeve 32 is a needle protection housing 12 that can be pivoted into position over the needle at an appropriate time. The male luer fitting 32A on the sleeve is described by Landis as being “threadingly attached” to the female luer fitting 34A on the syringe (column 6, lines 27 and 28).

Even assuming, arguendo, that the syringe disclosed by Landis constitutes the “vial” recited in claim 1, that the female luer fitting on the end of the syringe corresponds to the required “needle hub,” and that the male luer fitting on the sleeve constitutes the claimed “collar having . . . gripper means for gripping the needle hub,” the interacting male and female luer fittings do not “non-removably” attach the needle protection housing to the hub, as required by claim 1, because they are attached to one another by threads and there is no teaching in Landis that the sleeve cannot be unthreaded after having been fitted to the end of the syringe. Moreover, is there no reason to believe this inherently would be the case.

The rejection of independent claim 1 as being anticipated by Landis therefore is not sustained nor, it follows, is the like rejection of dependent claims 2-4.

Independent claim 6 is directed to a needle protection device comprising a collar configured to fit to the hub of a vial from which a needle extends with the collar having extending therefrom “gripper means for non-removably attaching said collar to said hub once said collar is mated to said hub,” and a needle housing flexibly connected to the collar and being pivotable into alignment with the vial to cover the needle. The reasoning set forth above applies also to claim 6, and we will not sustain the rejection of claim 6 or of claim 8, which depends therefrom.

The Rejection Under Section 103

Claims 5 and 7 stand rejected as being unpatentable over Landis in view of Pyrozyk. Claims 5 and 7 add to the claims from which they depend the requirement that the gripping means be a plurality of hook-like fingers that snap over the hub and remain engaged with the hub while allowing the collar to be rotatable about the hub. Considering the teachings of Landis in the light of Section 103¹ does not alter our finding that Landis fails to disclose or teach the subject matter recited in claims 1 and 6, from which claims 5 and 7 depend, for it is our view that no suggestion exists which would have

¹The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

motivated one of ordinary skill in the art to modify the Landis structure so that it would conform to the language of the independent claims. This deficiency is not cured by the secondary reference.

The rejection of claims 5 and 7 is not sustained.

SUMMARY

Neither rejection is sustained.

The decision of the examiner is reversed.

NEAL E. ABRAMS
Administrative Patent Judge

CHARLES E. FRANKFORT
Administrative Patent Judge

LAWRENCE J. STAAB
Administrative Patent Judge

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APPEAL NO. 2001-1399 - JUDGE ABRAMS
APPLICATION NO. 09/227,819

APJ ABRAMS

APJ STAAB

APJ FRANKFORT

DECISION: **REVERSED**

Prepared By:

DRAFT TYPED: 21 Mar 02

FINAL TYPED: